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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF WASHINGTON**

9 **KATHY ALLSTOT,**

10 Plaintiff,

11 vs.

12 **CONFLUENCE HEALTH, et al.,**

13 Defendants.

Case No. 2:16-cv-0373-SMJ

**JOINT STATEMENT OF  
UNCONTROVERTED FACTS**

14 Pursuant to Section 7.B of the Court's Scheduling Order (ECF No. 12), the  
15 parties submit the following Joint Statement of Uncontroverted Facts pertinent to  
16 Defendants' pending Motion for Summary Judgment (ECF No. 40):

- 17 1. Allstot began working for Central in 2012 as a Nurse Assistant.
- 18 2. Allstot applied for a transfer to the Contact Center in 2014, and as part  
19 of the transfer process she interviewed with Contact Center Manager Kimberly  
20 Gullett.  
21

1           3.     Allstot mentioned during her interview that she had experienced  
2 migraines and that she had taken FMLA leave, but Gullett approved her transfer  
3 request anyway.

4           4.     Gullett was the person who hired Allstot into the Contact Center.

5           5.     Allstot began working as a Contact Center Specialist I (“CCS-I”) in  
6 Central’s Contact Center on September 30, 2014.

7           6.     Allstot’s position in the Contact Center position was a day-shift  
8 position working from 9:00 a.m. until 6:00 p.m.

9           7.     Allstot’s job as a CCS-I required her to schedule, cancel, and  
10 reschedule appointments with various Confluence providers.

11          8.     Allstot’s job required her to take calls from patients about their  
12 illnesses, schedule their appointments, and arrange for medication refills.

13          9.     In the Contact Center, Allstot sat in a room of cubicles staffed by  
14 other Contact Center Specialists.

15          10.    Calls coming in to the Contact Center would be placed in a queue, and  
16 the first available Contact Center Specialist would get the next call in the queue.

17          11.    Allstot’s job placed her in continuous contact with patients.

18          12.    Allstot’s job required her to comply with clinic and department  
19 standards pertaining to the use of paid time off and unpaid absences due to medical  
20 reasons.

1           13. Allstot's position in the Contact Center was a full-time, 40-hour-per-  
2 week position, and her shift was 9:00 a.m. to 6:00 p.m., Monday through Friday.

3           14. Allstot could not perform her job as a CCS-I unless she was  
4 physically present at work.

5           15. After Allstot had transferred to the Contact Center, Gullett created a  
6 different position called Contact Center Specialist-II ("CCS-II").

7           16. CCS-II's assisted Gullett with performing some supervisory functions,  
8 such as handling employee call-offs, in addition to performing the work of a CCS-  
9 I.

10           17. New rules, and changed rules, for handling incoming patient calls  
11 would routinely be circulated to the Contact Center Specialists in huddles and by  
12 email; "things changed every day."

13           18. "Doctor's hours change. Their days off change. And if you're not  
14 there every single day to hear about what has changed, then you go in and you  
15 make mistakes, unless you have the time to go back and read the huddles before  
16 you started taking phone calls."

17           19. On April 3, 2015, Allstot received a coaching in which she was  
18 reminded to "[m]ake sure you are catching up on Huddles when you are not here,"  
19 to "[s]low down and take some time to make sure you are looking at the  
20 Scheduling grid and the restrictions per provider. Grids are changing all the time  
21 and with you being out of the office, things are getting missed."

1           20.   Gullett gave Allstot a six-month performance review on May 13,  
2 2015.

3           21.   In this review, Gullett make the following observation: “I am finding  
4 the following errors are occurring repeatedly at times, due to her [Allstot] being  
5 out of the office: Sending Telephone Encounters and Staff Messages to the  
6 incorrect “Pools”. Booking patients based on the instruction or grid guidelines of  
7 when she was here in the office last. During her absences, we are constantly  
8 updating and changing things. I have spoken with Kathy and she is going to work  
9 on reading all huddles notes and emails from myself and Marcus Miller when she  
10 has been out, before she takes calls and books patients for future appointments. I  
11 think that this will alleviate these issues.”

12           22.   On June 2, 2015, Gullett issued Allstot a coaching for “rolling calls,  
13 taking below average number of calls, still sending Telephone Encounters and  
14 Staff Messages to the incorrect pools, taking long breaks/lunches,” and having her  
15 phone “in work [mode] for an extended amount of time before going to  
16 breaks/lunches and leaving for the day.”

17           23.   Allstot was cautioned in this coaching that (among other things) she  
18 “must double check her work with the routing of all Telephone Encounter and  
19 Staff Messages” and that “[w]hen she is scheduled on the phones, she needs to be  
20 in ‘Ready’ state to take calls.” She was told that failure to meet and maintain  
21 acceptable standards of performance “may result in a formal discipline process.”

1           24. Allstot once made an error in which she typed the wrong year when  
2 scheduling a patient's appointment—she typed November 9, 2016, instead of  
3 November 9, 2015—causing him to arrive at the clinic at a time when there was no  
4 one available to see him.

5           25. Allstot was coached repeatedly about her errors.

6           26. Gullett arranged for extra training for Allstot in response to her errors,  
7 and arranged for Lorri Duran, a CCS-II, to sit with Allstot for an entire day so that  
8 Duran could observe how she was doing and provide additional training.

9           27. Allstot also received additional periodic in-person verbal coaching  
10 from the CCS-II's.

11           28. Allstot continued to make mistakes even after going back and reading  
12 huddles.

13           29. Allstot admits that there was nothing inappropriate about Gullett  
14 pointing out her errors with respect to patient scheduling.

15           30. Confluence Practice Managers reached out to Gullett and asked her to  
16 do something to address the errors that Allstot was making.

17           31. Allstot admits that Gullett also counseled other Contact Center  
18 Specialists who were making mistakes, but also admits that she has “[n]o idea”  
19 about how many ended up receiving counseling or corrective action.

20           32. On October 29, 2015, Gullett issued Allstot a written counseling  
21 statement.

1           33. In this counseling statement, Gullett stated that Allstot “continues to  
2 struggle with job performance. She has a high error rate and continues to take  
3 lower than the average number of total calls, taking longer breaks/lunches and is  
4 still continuing to have an extremely high amount of time in ‘Work State’, after  
5 counseling and coaching.”

6           34. Among the expectations that Gullett listed for Allstot in this statement  
7 were that Allstot’s “[e]rror rate needs to decrease down to no more than 5 errors in  
8 the next 30 days and moving forward” and that she needed to take only “15  
9 minutes each for breaks and 1 hour for lunches.”

10          35. Gullett reminded Allstot in this statement that the “[f]ailure to meet  
11 and maintain acceptable standards of performance ... will result in further  
12 discipline up to and including termination of employment.”

13          36. Allstot received a counseling on November 20, 2015, about  
14 inappropriately referring to a patient as “a real witch.”

15          37. Allstot cleaned out her desk on about December 2, 2015, thinking that  
16 she would be fired.

17          38. Allstot admits that her superiors never told her that it was okay to  
18 keep making mistakes after she had been trained and coached and counseled.  
19 Allstot Dep. 203:14-16.  
20  
21

1           39. Gullett emailed Allstot on January 19, 2016, notifying her that Central  
2 had discovered nine errors made by Allstot in the six weeks between November  
3 27, 2015, and January 14, 2016.

4           40. Three days after this email, Allstot was presented with a Last Chance  
5 Agreement.

6           41. The Last Chance Agreement stated, in part, that “[b]y signing this  
7 Last Chance Agreement you understand that ANY violation of CH’s work rules or  
8 policies ... will result in your immediate termination from employment.”

9           42. The Last Chance Agreement also stated that “[t]here will be no further  
10 corrective action taken in the event of a performance, attitude or behavior problem,  
11 unapproved tardy, absence or policy violation.”

12           43. The Last Chance Agreement did not make any reference to Allstot’s  
13 medical condition or to her prior taking of FMLA leave.

14           44. The only absence pattern described in Allstot’s Last Chance  
15 Agreement was Allstot’s pattern of being tardy from rest and meal breaks: “From  
16 12/3/15-1/12/16, Kathy has 13 occurrences of tardiness from rest breaks and from  
17 12/9/15-1/11/16 she has an additional 10 occurrence of tardiness from lunch  
18 breaks. This behavior was addressed on 6/2/15, 10/16/15-updated 11/4/15 and  
19 again on 1/11/16.”

20           45. Allstot knew that, by signing the Last Chance Agreement, if she made  
21 any mistake, she would be let go.

1           46.    The Last Chance Agreement was not just for attendance; “It was for  
2 anything. One mistake and you’re out the door.”

3           47.    Allstot cleaned out her desk again the day after she signed the Last  
4 Chance Agreement.

5           48.    Allstot does not dispute that she continued to make errors after  
6 signing the Last Chance Agreement.

7           49.    Gullett also informed Allstot during February of 2016 that she had  
8 received complaints about Allstot from patients in clinics.

9           50.    Central terminated Allstot’s employment on March 1, 2016.

10          51.    When Allstot was fired, she was told that the reason why she was  
11 being fired was because she continued to make errors.

12          52.    According to Allstot, “I was told due to my errors and lack of  
13 attention to detail that I wasn’t a good fit for that particular position at the Contact  
14 Center.”

15          53.    Brianna Thaut was not part of the decision to terminate Allstot’s  
16 employment and was never consulted about the decision.

17          54.    Allstot began applying for and taking FMLA leave for her migraines  
18 from the start of her employment in 2012.

19          55.    Allstot’s balance of available FMLA time never ran down to zero  
20 while she was working in the Contact Center.  
21



1           56. If Allstot was unsure about the amount of available FMLA time that  
2 she had, she would ask Brianna Thaut of Confluence's Human Resources  
3 department, who would provide her with that information.

4           57. In the fall of 2015, Allstot was not required to re-certify her  
5 previously-approved leave request.

6           58. Allstot's superiors never told her that she was unable to go to the  
7 doctor because she did not have enough accumulated FMLA time to cover the  
8 absence.

9           59. Allstot requested recertification of her intermittent FMLA leave in  
10 early February of 2016 for her various chronic illnesses because she expected to  
11 need time off for appointments with various health care providers as well as if any  
12 problems arose.

13           60. Allstot also requested recertification of intermittent FMLA leave in  
14 early February of 2016 to care for her aging mother.

15           61. Allstot's intermittent FMLA leave recertification requests were  
16 approved on February 25, 2016.

17           62. The employee who handled Allstot's intermittent FMLA leave  
18 recertifications in February of 2016 was Brianna Thaut.

19           63. At the time of Allstot's discharge on March 1, 2016, there were no  
20 outstanding-yet-unfulfilled requests from Allstot to miss any work for any reason  
21 relating to the FMLA.

1           64. Allstot has no idea of everyone at CWHSA who had taken FMLA  
2 leave.

3           65. Confluence had a written attendance policy that applied to all  
4 CWHSA employees, including Allstot.

5           66. Confluence also had a written absence notification policy that applied  
6 to all CWHSA employees, including Allstot.

7           67. When there are calls in the queue, it is unknown whether the person is  
8 calling for emergency or non-emergency reasons.

9           68. During the time that Allstot worked in the Contact Center, she had  
10 reviewed both the attendance policy and the absence notification policy.

11           69. Allstot admits that she was sometimes tardy.

12           70. Allstot admits that she was sometimes tardy for reasons such as letting  
13 her dogs out, or going to the bank, or other reasons having nothing whatsoever to  
14 do with her medical conditions or her FMLA usage.

15           71. Allstot attributes her long lunches to being “late probably leaving my  
16 house from letting the dogs out” and says that this “has to do with traffic.”

17           72. On January 11, 2016, Gullett told Allstot that she had “been taking  
18 long lunches lately,” that she was “concerned with the amount of them,” and that  
19 Allstot needed “to be consistent at 1 hour lunches please.” Gullett also suggested to  
20 Allstot to “[m]aybe set an alarm to help?”

21           73. Allstot denies that her medications affect her while she is at work.

1           74. On October 19, 2015, Allstot inquired about the possibility of being  
2 transferred a part-time position.

3           75. Part-time employees are generally required to comply with the same  
4 attendance, tardiness, and call-off policies as full-time employees.

5           76. Allstot had originally transferred into the Contact Center because “it  
6 was just getting to be too much doing 12-hour shifts, three in a row, and trying to  
7 help my dad at home with my mother.”

8           77. Nurse Assistants in the Resource Unit also routinely perform highly  
9 physical tasks such as lifting and dressing patients, helping patients with toilet  
10 activities, assisting with patient transport, and setting up and cleaning rooms.  
11 Nurse Assistant positions require continuous walking, and frequent standing,  
12 reaching above shoulder height, and lifting, pulling and pushing as much as 50  
13 pounds.

14           78. Allstot does not believe herself presently capable of performing any  
15 job involving lifting, such as might need to be done while working in a nursing  
16 home.

17           79. Within a month of her discharge, Allstot filed an application with the  
18 Social Security Administration claiming to be totally disabled and unable to work  
19 as of March 1, 2016, due to a back injury.

20           80. Allstot, as of the time of her discharge, had never filed any charge of  
21 discrimination or testified or assisted with any enforcement proceedings.

1           81. Elizabeth Delgado never requested FMLA leave when she worked for  
2 Central.

3           82. Elizabeth Delgado did not have any medical conditions while she was  
4 working for Central.

5           83. Central placed Elizabeth Delgado on a Last Chance Agreement before  
6 she was terminated.

7           84. Central hired Amanda McBride on November 10, 2014.

8           85. McBride did not become eligible to take FMLA leave at CWHSA  
9 until her one-year anniversary of employment, which was on November 10, 2015.

10          86. CWHSA placed McBride on a Last Chance Agreement on October  
11 23, 2015.

12          87. Tom Christensen (“Christensen”) is Director of Talent Engagement at  
13 Confluence.

14          88. Kimberly Gullett (“Gullett”) is the Contact Center Manager for  
15 Confluence.

16          89. Kaci Ramsey (“Ramsey”) was an Employee Relations Specialist at  
17 Confluence during the time that Allstot worked there.

18          90. Elizabeth Delgado (“Delgado”) was a Contact Center Specialist at  
19 Confluence and worked with Allstot.

20          91. Amanda McBride was a Contact Center Specialist at Confluence and  
21 worked with Allstot.

1           92. Allstot began employment with Confluence in working in the  
2 Resource Department, floating as a CNA, and then transferred to its Emergency  
3 Department in 2013, before transferring to its Contact Center as a Contact Center  
4 Specialist.

5           93. In order to obtain FMLA leave, Confluence requires its employees to  
6 specifically request it.

7           94. Ramsey claims she coached Allstot, with Gullett, on attendance and  
8 performance issues.

9           95. But Ramsey nevertheless sought to reduce Allstot's absences from  
10 work.

11           96. Gullett was unaware if Allstot's Migraines affected her ability to  
12 work.

13           97. Many or all of the Contact Center employees were late to their shifts  
14 at one time or another.

15           98. There were Contact Center employees were late multiple times but  
16 were not terminated.

17           99. Employees that are sick are advised to stay home.

18           100. Confluence terminates employees if they do not sign Last Chance  
19 Agreements.

20           101. Allstot's termination was based upon her Last Chance Agreement.  
21



**CERTIFICATE OF SERVICE**

I certify that on July 27, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF System. The Notice of Electronic Filing for the foregoing specifically identifies recipients of the electronic notice.

/s/Holly Holman

Holly Holman